

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DWIGHT ZUNINO,

Petitioner,

v.

SUTTER COUNTY SUPERIOR COURT,

Respondent.

Case No. 2:22-cv-00140-EFB P

ORDER GRANTING PETITIONER'S
APPLICATION TO PROCEED IN FORMA
PAUPERIS AND DIRECTING THE CLERK
OF COURT TO ASSIGN A DISTRICT
JUDGE TO RULE ON THESE FINDINGS
AND RECOMMENDATIONS

ECF No. 6

FINDINGS AND RECOMMENDATIONS
THAT THIS PETITION BE DISMISSED AS
UNEXHAUSTED

ECF No. 1

Petitioner, a state prisoner proceeding without counsel, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, and a request to proceed *in forma pauperis*. He was convicted in 2020 and sentenced in October of 2021. ECF No. 1 at 2. As discussed below, the petition is unexhausted and, accordingly, it must be dismissed.

The amended petition is before the court for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine the habeas petition and order a response to the petition unless it “plainly appears” that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

Petitioner argues that the state court illegally imposed a sentencing enhancement without the requisite finding of fact by a jury. ECF No. 1 at 3. He also claims that the state court illegally

1 sentenced him to a term beyond the statutory maximum. *Id.* He acknowledges, however, that the
2 California Supreme Court has not yet ruled on these claims. *Id.* at 6. To exhaust federal habeas
3 claims, a petitioner must present them to the state's highest court and receive a ruling therefrom.
4 *See Baldwin v. Reese*, 541 U.S. 27, 29 (2004). Given that the petition contains only unexhausted
5 claims, the court recommends that it be dismissed. *See Raspberry v. Garcia*, 448 F.3d 1150,
6 1154 (9th Cir. 2006). Petitioner may re-file his petition once he exhausts his claims in state court.


7 It is ORDERED that:

- 8 1. Petitioner's application to proceed *in forma pauperis*, ECF No. 6, is granted.
- 9 2. The Clerk of Court shall assign a district judge to rule on these findings and
10 recommendations.

11 It is RECOMMENDED that petitioner's petition, ECF No. 1, be dismissed without
12 prejudice for failure to exhaust.

13 These findings and recommendations are submitted to the U.S. District Court Judge
14 presiding over this case under 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of
15 Practice for the United States District Court, Eastern District of California. Within fourteen days
16 of service of the findings and recommendations, petitioner may file written objections to the
17 findings and recommendations with the court. That document must be captioned "Objections to
18 Magistrate Judge's Findings and Recommendations." The District Judge will then review the
19 findings and recommendations under 28 U.S.C. § 636(b)(1)(C).

20 Dated: March 1, 2022.

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22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
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